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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/701,057	11/22/2000	Henning Von Spreckelsen	FIL-008	7735
22832	7590	11/30/2009		
K&L Gates LLP STATE STREET FINANCIAL CENTER One Lincoln Street BOSTON, MA 02111-2950			EXAMINER HICKS, ROBERT J	
			ART UNIT 3781	PAPER NUMBER
			MAIL DATE 11/30/2009	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary****Application No.**

09/701,057

**Applicant(s)**

VON SPRECKEISEN ET AL.

**Examiner**

ROBERT J. HICKS

**Art Unit**

3781

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 26 October 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 12-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 12-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 November 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/02)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on October 26, 2009 has been entered.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

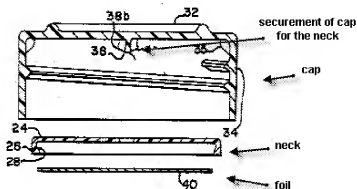
(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. **Claims 12, 16, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moore (5,680,968) in view of Graboski et al. (6,117,506) [Graboski] and further in view of Flanagan (6,082,568).**

Regarding Amended Claims 12 and 16, plus claim 17, the patent to Moore – a container closure system – discloses a process for bottling a fluid comprising a thin-walled plastic bottle assembly [Fig. 1] with a molded thin-walled bottle body [12, Fig. 3] having a top-located open mouth [20]; filling said bottle body with a fluid through said open mouth of said bottle body [Col. 2 Lines 64-67, and Col. 3 Lines 13-15]; fitting said fluid filled bottle body a molded neck and cap assembly [18, 24] having a neck [24] to which a resealable cap [18] is removably secured [Figs. 4 and 5], a base [26] that is sized to correspond to said open mouth of said fluid filled body [Fig. 3] and a tearable sealing foil [40] that is completely sealed to the base [Col. 4 Lines 4-7]; and induction heat sealing said bottle body to said foil of said neck and cap assembly to completely seal said bottle body [Col. 4 Lines 20-24]. The neck and foil are assembled together first, before the neck is placed on the bottle body, and then the foil is induction heat sealed to the container. In addition, *Webster's New World Dictionary of the English Language* defines the term fluid as "a substance that can flow". The contents in the Moore container can flow through the orifices of the neck similar to a fluid, since the product is flow controlled.



Moore does not expressly disclose that the bottle body is extrusion blow molded and non-gas tight; however, the patent to Graboski – a multilayer bottle – discloses a container (**Graboski**, 10) that is extrusion blow molded and non gas-tight (**Graboski**, Col. 2 Lines 59-64, and Col. 3 Lines 11-24). Once the gas has been used to open the container top, and the bore device removed, the gas can escape from the container, making the container non-gas tight. It would have been obvious at the time of the invention to one of ordinary skill, using the teaching, suggestion, and motivation within the prior art, to modify the Moore container to be extrusion blow molded and non gas tight, as suggested by Graboski, “for protecting its contents from degradation due to light” (**Graboski**, Col. 1 Lines 46-47).

The Moore and Graboski combination does not expressly disclose that the neck and cap assembly are both injection molded; however, the patent to Flanagan - a cap and container combination – discloses that the neck and cap (**Flanagan**, 3, 4) and the container (**Flanagan**, 1) are injection molded (**Flanagan**, Col. 6 Lines 45-47, Col. 7 Lines 1-3, and Col. 8 Lines 12-13). The neck and cap are injection molded in order for the items to be mass produced. It would have been obvious at the time of the invention to one of ordinary skill, using the teaching, suggestion, and motivation within the prior art, to manufacture the Moore and Graboski combination cap and container assembly using injection molded parts, as suggested by Flanagan, in order to produce the product on a mass scale (**Flanagan**, Col. 2 Lines 44-48), and as the liner can be removed from the interior of the neck and cap assembly (**Flanagan**, Col. 2 Lines 61-65).

**5. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Moore in view of Graboski in view of Flanagan as applied to amended claim 12 above, and further in view of Kitahora et al. (6,076,334) [Kitahora].**

Regarding Amended Claim 13, Moore in view of Graboski in view of Flanagan discloses all the limitations substantially as claimed, as applied to amended claim 12 above. The Moore, Graboski, and Flanagan combination does not expressly disclose a sterilization step for the foil; however, the patent to Kitahora – a system and method of sterile packaging – discloses a cap sterilization process (**Kitahora**, 26) for caps made with a metal sheet (**Kitahora**, Col. 3 Lines 4-10). The caps are sterilized before being placed on the bottle to prevent contamination of the contents. It would have been obvious at the time of the invention to one of ordinary skill, using the teaching, suggestion, and motivation within the prior art, to manufacture the Moore, Graboski, and Flanagan combination cap and container assembly by going through a sterilization process for the cap, as suggested by Kitahora, "to omit any sterilization treatment of plastic containers at the time of filling beverages" (**Kitahora**, Col. 1 Lines 39-41).

**6. Claims 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moore in view of Graboski in view of Flanagan as applied to amended claim 12 above, and further in view of Kauffman et al. (4,141,680) [Kauffman].**

Regarding Amended Claim 14, Moore in view of Graboski in view of Flanagan discloses all the limitations substantially as claimed, as applied to amended claim 12 above. The Moore, Graboski, and Flanagan combination does not expressly disclose that the bottles are extrusion blow molded in a rotary machine; however, the patent to

Kauffman – a rotary stretch blow molding process – discloses blow molded containers that are processed through a rotary machine (**Kauffman**, Fig. 1). The bottles are made in a known assembly line fashion. It would have been obvious at the time of the invention to one of ordinary skill, using the teaching, suggestion, and motivation within the prior art, to extrusion blow mold the Moore, Graboski, and Flanagan combination cap and container assembly by going through a rotary machine, as suggested by Kauffman, as "The container caps and containers of the present invention are preferably mass produced." (**Flanagan**, Col. 8 Lines 12-13).

Regarding Amended Claim 15, Moore in view of Graboski in view of Flanagan in view of Kauffman discloses all the limitations substantially as claimed, as applied to claim 14 above; further, Flanagan teaches each bottle body is passed directly to a fluid filling station (**Flanagan**, Col. 8 Lines 21-24).

### ***Response to Arguments***

7. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.
8. In response to applicant's argument that the Gach (4,815,618), Graboski, and Flanagan references fail to show certain features of applicant's invention regarding amended claims 12 and 16 (**Remarks**, Page 4 Line 20 to Page 5 Line 5), see Paragraph 4 of this office action to see how Moore in view of Graboski in view of Flanagan meets the claim limitations regarding amended claims 12 and 16.
9. In response to applicant's argument that the Gach, Graboski, Flanagan, and Kitahora references fail to show certain features of applicant's invention regarding

amended claim 13 (**Remarks**, Page 6 Lines 9-12), see Paragraph 5 of this office action to see how Moore in view of Graboski in view of Flanagan in view of Kitahora meets the claim limitations regarding amended claim 13.

10. In response to applicant's argument that the Gach, Graboski, Flanagan, and Kauffman references fail to show certain features of applicant's invention regarding amended claims 14 and 15 (**Remarks**, Page 6 Lines 22-25), see Paragraph 6 of this office action to see how Moore in view of Graboski in view of Flanagan in view of Kauffman meets the claim limitations regarding amended claims 14 and 15.

### ***Conclusion***

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: see PTO-892 Notice of References Cited.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ROBERT J. HICKS whose telephone number is (571)270-1893. The examiner can normally be reached on Monday-Friday, 8:30 AM - 5:00 PM, EST. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on (571) 272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Robert J Hicks/  
Examiner, Art Unit 3781

/Anthony Stashick/  
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